

REMARKS

Claims 1, 3-48 and 52-99 were pending. By this amendment, claims 16, 38 and 86 are canceled without prejudice or disclaimer, claims 1, 23, 46 and 76 are amended, and new claims 100-102 are added. Therefore, claims 1, 3-15, 17-37, 39-48, 52-85 and 87-102 are pending in the application, with claims 3, 4, 9, 13-15, 17-20, 24-45, 53-75, and 79-99 being withdrawn from consideration. As a result claims 1, 5-8, 10-12, 21-23, 46-48, 52, 76-78 and 100-102 are pending for examination with claims 1, 23, 46, 76 and 100-102 being independent claims. No new matter has been added.

I. Allowable Subject Matter

Applicants thank the Examiner for indicating that claims 5, 6 and 16 would be allowable if rewritten in independent form. Claim 16 has been rewritten in independent form as new claim 100. Allowable claims 5 and 6 have also been rewritten in independent form as claims 101-102, with the change that “one or both of the runner and the deck is arranged and mounted to the spacer to allow movement of a portion of either the runner or the deck relative to the other” rather than requiring “longitudinal movement of the runner or the deck relative to the other.” The same change is made to claim 46.

Accordingly, at least new claims 100-102 are allowable.

II. Rejections Under 35 U.S.C. §102 and §103

The Office Action rejects claims 1, 7, 10-12, 21, 22, 46 and 47 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,765,854 to Moore. Claims 23, 76 and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moore in view of U.S. Patent 5,413,371 to Trimble. These rejections are respectfully traversed and/or moot.

The features of allowable claim 16 have been incorporated into independent claims 1, 23, 46 and 76. As a result, claim 46, from which claim 16 depended, should be allowable, as well as claims 5-8, 10-12, 22, 47 and 48 which depend from claim 46.

In addition, Moore does not teach or suggest a “runner has a width that is approximately 0.4 to 0.8 times a width of the deck, and the deck has a width between 7 and 15 inches” as set

forth in claims 1, 23 and 76. At best, Moore teaches a deck that is more narrow than the underlying snowboard.

Accordingly, claims 1, 23, and 76, as well as claims 3, 4, 9, 13-15, 17 -21 and 52-64 which depend from claim 1, claims 24-37, 39-45 and 65-75 which depend from claim 23, and claims 77-85 and 87-99 which depend from claim 76, are allowable. Accordingly, withdrawal of the rejection of these claims is respectfully requested.

III. Rejections Under 35 U.S.C. §112

The Office Action rejects claims 48, 52 and 77 under 35 U.S.C. §112, second paragraph. The Office Action indicates that “Applicant also stated that claims 48, 52 and 77 read on the elected embodiment, and therefore do not include a spring biased hinge,” and that “[Claims 48, 52 and 77] are indefinite in that it is unclear how these limitations could be consistent with the remainder of the claims from which they depend, and specifically given applicant’s election of the embodiment having only rigid spacers.”

As an initial matter, independent claims 1, 23, 46 and 76 are generic to all of the Species identified in the December 4, 2001 Office Action. Thus, these claims read on or cover all of the Species, including those with rigid or hinged spacers. Accordingly, claims that depend from these independent claims that call out particular features of individual species are not inconsistent with the independent claims, but rather recite specific features of one of several species covered by the independent claim. In any case, the fact that examined claims may not correspond to an elected species does not itself render the claims indefinite under §112, second paragraph. Rather than a rejection under §112, the non-correspondence of a claim to an elected species should most likely be handled by timely withdrawal of the claim from consideration.

Applicant’s election regarding the three-way species restriction, including the indication of the generic status of at least independent claims 1, 23, 46 and 76, is detailed in January 4, 2002 Amendment. Careful review of the Applicant’s indication of claim correspondence regarding the elected species on page 15 does not indicate that claims 52 and 77 correspond to every elected species. Instead, claims 52 and 77 are said only to correspond to elected Species IIb and IIb, but not to Species Ia. Despite this election and indication of correspondence of claims by the Applicant, claims 52 and 77 were not withdrawn from examination in the subsequent Office Action, but instead were searched and examined. Perhaps these claims should

have been withdrawn from consideration in the September 16, 2003 Office Action, but the failure to do so only supports Applicant's contention that a search and examination of all species would not place an undue burden on the examiner.

As for claim 48, this claim does in fact correspond to all of elected Species Ia, IIb and IIIb. Claim 48 requires that at least one of the first and second upturned ends is constructed and arranged to contact the deck while the device is being ridden. For example, as described at page 6, lines 14-20, the runner may flex when the device is heavily weighted (such as when performing a trick referred to as an "ollie") so that the upturned end of the runner contacts the deck. Such contact may occur regardless of the spacer type, and may occur with a rigid spacer. Thus, claim 48 is entirely consistent with the elected species.

Accordingly, withdrawal of these rejections is respectfully requested.

IV. Information Disclosure Statements

Applicant has not received initialed Form 1449's from the Information Disclosure Statements previously submitted. Return of copies of such initialed Form 1449's would be appreciated.

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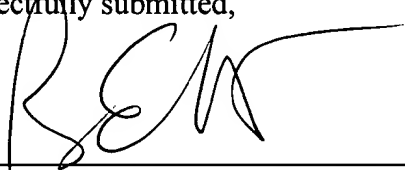
CONCLUSION

In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,

By: _____


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